

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Restoration Order  
Issued to Earl Buysse for the Alteration  
of the Cross-Section of Kimpe Slough  
(Basin No. 42-106W) Without a Permit from  
the Commissioner of Natural Resources

FINDINGS OF FACT.  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles On January 27 and 28, 1993, at the Lyon County Courthouse, Commissioner's Room, Marshall, Minnesota.

Appearing on behalf of the Minnesota Department of Natural Resources was Paul A. Strandberg, Special Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155.

Appearing on behalf of Earl Buysse was Kevin Stroup, Attorney at Law, Nelson, Oyen, Torvik, Minge and Gilbertson, 120 - 10th Avenue, P.O. Box 656, Clarkfield, Minnesota 56223.

The record in this proceeding closed upon receipt of post-hearing reply memoranda on March 2, 1993.

This record is a Recommendation, not a final decision. The Commissioner of the Minnesota Department of Natural Resources will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusion and Recommendation contained herein. Pursuant to Minn. Stat. 42.61, the final decision of the Commissioner shall not be made until this report has been made available to the parties to the proceeding for at least 10 days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner. Parties should contact Rodney W. Sando, Commissioner, Minnesota Department of Natural Resources, DNR Building, 500 Lafayette Road, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Whether Earl Buysse violated Minn. Stat. 103G.245, subd. 1 (1990) by changing or diminishing the course, current or cross-section of a public water without obtaining a permit from the Commissioner of Natural Resources and whether the 1992 Restoration Order issued in connection with Mr. Buysse's activities is supported by the facts and is reasonable and appropriate.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. Basin No. 42-106W, also known as Kimpe Slough, is an 18-22 acre water basin located in the northeast quarter of the northeast quarter of Section 14, Eidsvold Township 113 North, Range 43 West, Lyon County. Kimpe Slough is a protected public water of the State of Minnesota as defined by Minn. Stat. 103G.005, subd. 15 and is classified as a Type 4 wetland according

to the Wetlands of the United States, United States Department of Interior Fish and Wildlife Circular No. 39, 1971 Edition. Exs. 19, 23.

2. Kimpe Slough exhibits typical characteristics of a Type 4 wetland - 6 inches to 3 feet deep, averaging approximately 1.5 to 2 feet deep; it is a mixture of open water and marshland; It provides water filtration and flood control; and its aquatic vegetation includes cattails and reeds. Kimpe Slough

is suitable for wildlife habitat and recreational activities. Ex. 19.

3. Several hundred acres of farmland are drained into Kimpe Slough by artificial and natural drainage. The land is gently sloped from south to north; water flows to Kimpe Slough from properties to the south.

4. Earl Buysse has been a farmer all his life. Mr. Buysse farms a total of approximately 1,200 acres in locations in and around Lyon County. He began farming the area south of Kimpe Slough in 1981 when he began growing crops on approximately 400 acres leased from E. J. and Bertha Kerr.

5. In 1986 Mr. Buysse, in conjunction with property owners located south of Kimpe Slough, implemented a drainage project that would more efficiently drain their cropland. They installed drainage tile identified as the "Kerr Tile" in Exhibit 2 that more efficiently drained their properties. The outlet of the Kerr Tile channeled water into Kimpe Slough.

6. The last part of the Kerr Tile Project required that the run-out level of Kimpe Slough be lowered below the Kerr Tile outlet into Kimpe Slough. Kimpe Slough's outlet identified as "Outlet Ditch" on Exhibit 2 was dug lower to more efficiently accommodate the drainage of properties south of Kimpe Slough. Mr. Buysse and the other participants in the drainage project did not obtain a permit for lowering the run-out level of Kimpe Slough.

7. In 1986 Jeffrey Lewis, DNR Area Hydrologist, met at Kimpe Slough with Earl Buysse and other persons involved in the drainage project. Mr. Lewis and another DNR employee conducted hydrologic survey elevations at Kimpe Slough before and after the completion of the Kerr Tile Project.

8. Before the unauthorized ditching the run-out elevation for Kimpe Slough was determined to be 1145.6 feet. After the excavation the run-out was lowered to 1144.0 or 1.6 feet lower. Exs. 29, 30.

9. An "after-the-fact" permit that would allow lowering the run-out level of Kimpe Slough was applied for. On May 15, 1987 the DNR issued an Order denying the permit request and requiring that the outlet of Kimpe Slough be restored by construction of a concrete dam at the outlet. In the Matter of

the Alteration of the Cross-section of Kimpe Slough 42-106W, By Earl Buysse and Richard Kempe without a permit from the Commissioner of Natural Resources (hereinafter the 1987, Restoration Order) Ex. 13. The Order made Findings that included the following:

"4. Richard Kimpe on or about December 4, 1986 applied for a permit to drain Kimpe Slough. The \$50.00 filing fee was paid by Earl Buysse.

5. On or about December 8, 1986 Steve Larson, an employee of Severson Tiling Company, acting as a contractor, lowered the outlet of Kimpe Slough approximately 1.6 feet by excavating material along the waterway that serves as the outlet of Kimpe Slough.

6. At no time has any permit been issued for the alteration of the outlet of Kimpe Slough by the Department of Natural Resources, the Yellow Medicine Watershed District or the U.S. Army Corps of Engineers.

7. Prior to the illegal alterations at the outlet of Kimpe Slough, the maximum water depth in the basin was 3.0 feet with an average depth of 2.0 feet. Following the outlet excavation the maximum water level will be 1.4 feet with an average depth of 0.4 feet.

8. The lower outlet elevation will greatly damage the wetland by reducing a) the wetland size, b) the water storage capacity, and c) the value for waterfowl and furbearers."

Exhibit 13.

10. The 1987-Restoration Order was not appealed; it is a final decision of the DNR.

11. The 1987 Restoration Order required that Kimpe Slough be restored to the run out elevation that existed before the ditching. It also required the installation of a dam at the outlet of Kimpe Slough. The 1987 Restoration Order also established 1145.6 feet above mean sea level (1929 datum) as the run-out elevation of Kimpe Slough.

12. The DNR installed or caused to be installed a dam on the outlet of the Kimpe Slough water basin. The dam is concrete, 16 feet long having two six-foot spans with a four-foot span in between them. The four-foot span is 12 inches lower than the two six-foot spans. Ex. 14. The 1987 Restoration Order required that the run-out level controlled by the dam be set at 1145.61 feet above mean sea level (1929 datum). Instead of being installed at the level being required by the 1987 Restoration Order, the dam was installed at 1146.04 feet above sea level or approximately .44 feet (5.3 inches) higher than that required by the 1987 Restoration Order.

1 As will be explained later in Finding 19 because of a survey benchmark error, .24 feet must be added to all survey elevations taken before the December 15, 1992 survey.

13. In May, 1991, Mr. Buysse purchased the property on which Kimpe Slough is located. Mr. Buysse farmed this acreage in addition to the approximately 400 acres that he farmed south of Kimpe Slough. He complained to the DNR that the dam had been installed higher than that authorized by the 1987 Restoration Order. He complained that during times of heavy rainfall the dam could cause flooding of his crops. In mid to late May, 1991, Mr. Buysse met with Ray Nyberg, Regional Hydrologist, Minnesota Department of Natural Resources. After hearing Mr. Buysse's complaint Mr. Nyberg agreed that a survey of elevations of Kimpe Slough should be undertaken to determine the correct elevations for the dam at Kimpe Slough.

14. During the first two weeks of June, 1991, before the survey of elevations was completed, a heavy rainfall occurred in the area. Exs. 18A, 186 and 24. The heavy rainfall and drainage of water into Kimpe Slough from properties south of Kimpe Slough caused flooding to Mr. Buysse's crops. Mr. Buysse desired to increase the flow of water out of Kimpe Slough. On or about June 11, 1991 Mr. Buysse placed dynamite on the dam in two places: on top of the left six foot span and on the side near the bottom of the left six foot span. The explosion of the dynamite increased the size of the opening to allow more water to flow out and lowered the crest elevation of the dam to 1145.34 feet above sea level (1929 Datum). On the left side of the left span, the explosion caused a channel around the dam at approximately 1144.9. Ex. 2.

15. Damage to the dam increased the flow of water out of Kimpe Slough and created two new run-out levels, 1144.9 and 1145.34, that were below the run-out level authorized by the 1987 Restoration Order, 1145.6 feet.

16. Mr. Buysse did not obtain a permit from the DNR prior to causing damage to the dam. Approximately five months after the damage to the dam he informally applied for an "after-the-fact" permit. Ex. 11. The permit request was denied. Ex. 12.

17. On or about April 3, 1992, Earl Buysse caused the excavation of a drainage ditch northeasterly from Kimpe Slough to a ditch along County Road 26. The drainage ditch has been dug to a level of 1144.94 feet which is below the level of the water surface 1145.19 of Kimpe Slough. The ditch is approximately 270 feet long and four feet wide. Exhibit 27 shows that water

flows out of Kimpe Slough northeasterly to the ditch along County Road 26.

This ditch is the present outlet of Kimpe Slough.

18. Exhibits 15A, 15B, 15C, 20 and 21 are aerial photographs of Section 14 Eidsvold Township. The photographs were taken in 1938, 1950 and 1979-1992. The photographs show that Kimpe Slough's historical outlet is to the north. The record in this proceeding also establishes that for several years there was also a northeasterly outlet from Kimpe Slough, for example, Exhibit 29; however, the northeasterly outlet has been plowed over and used for growing crops in most of the photos.

19. A definitive survey of Kimpe Slough was conducted on December 15, 1992. Ex. 2. To conduct this survey the DNR obtained a Court Order because Mr. Buysse refused to allow DNR personnel onto his property. The DNR's initial survey of Kimpe Slough in 1986 found that the run-out elevation was 1145.6. Ex. 29. However, that number is in error because the benchmark used

by the DNR was in error. The DNR used as a benchmark elevation the top south end of the 18-inch RCP culvert through County Road 26 just north of the dam. The County erroneously reported that the elevation of this benchmark was 1146.45 feet. Ex. 29. However, the correct elevation of that benchmark is 1146.69, or an additional .24 inches. Exs. 30, 26 and 2.

20. The destruction to the dam and excavations in 1986 and in 1992 have lowered the water surface level of Kimpe Slough. In 1986 before unauthorized excavations, the water surface level was approximately 1146.09 feet (1145.85 + .24). After the 1986 unauthorized ditching, the destruction of the dam in 1991 and excavation of the northeasterly ditch In 1992, the water surface is 1145.19 feet or approximately 11 inches below the water surface level before the unauthorized drainage activities. Kimpe Slough has been lowered by approximately one foot by the unauthorized drainage activity caused by Mr. Buysse. The run-out elevation has been lowered from 1145.84 in 1986 to 1144.90 in 1992 or .94 feet.

21. On July 17, 1992, the Commissioner of Natural Resources issued a Restoration Order requiring that Mr. Buysse restore the dam in the outlet of Kimpe Slough and fill the upstream end of the drainage ditch excavated northeasterly from Kimpe Slough. The 1992 Restoration Order proposed a compromise run-out elevation of 1145.2 feet above sea level (1929 Datum).

22. The 1992 Restoration order advised Mr. Buysse that he could demand a hearing. In a letter dated August 13, 1992, Mr. Buysse appealed the July 17, 1992 Restoration Order by demanding a hearing.

23. A Notice and Order for hearing was issued on December 24, 1992, by the Commissioner of Natural Resources establishing a hearing date of January 27, 1993, in the Lyon County Courthouse, Marshall, Minnesota.

24. The DNR incurred field inspection costs arising out of its investigation of Kimpe Slough totalling \$1,572.78. Ex. 28.

25. On or about the time Mr. Earl Buysse purchased the Kimpe property in May 1991 he received Exhibit 7 which required that he, as purchaser, refrain from future violations of laws that protect public waters in general and particularly, Kimpe Slough.

26. Mr. Buysse knew that the drainage of Kimpe Slough was a violation of laws that protect public waters. He also knew that destruction of the dam in 1991 and excavation of the northeasterly ditch in 1992 were violations of laws that protect public waters.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:



#### CONCLUSIONS

1. All relevant substantive and procedural requirements of law and rule have been fulfilled so as to vest the Commissioner and the Administrative Law Judge with jurisdiction in this matter.

2. Basin No. 42-106W also known as Kimpe Slough is a protected public water of the State of Minnesota pursuant to Minn. Stat. 103G.005, subds. 15 and 16. Minn. Stat. 103G.245, subd. I requires a public waters work permit to make any change in or remove a dam on public waters. This subdivision also requires a permit to change or diminish the course, current or cross-section of public waters by excavation of ditches.

3. All persons interested in this proceeding, and particularly Mr. Buysse as a subsequent purchaser of the Kimpe property, are bound by the terms of the 1987 restoration Order which is a final decision of the DNR that was not appealed.

4. The DNR proved by a preponderance of the evidence that Earl Buysse in 1991 dynamited the dam over the outlet of Kimpe Slough and that the explosion (1) damaged the dam and (2) created new, lower run-out elevations for Kimpe Slough. The DNR proved by a preponderance of the evidence that Earl Buysse in 1992 caused to be excavated a ditch that further drains Kimpe Slough by channeling water in a northeasterly direction to the County Road 26 ditch.

5. Because Mr. Buysse was a principal in the Kerr Tile Project which gave rise to the 1987 Restoration Order, and because Mr. Buysse had previously been warned against violating laws that protect public waters, particularly Kimpe Slough, his excavation of the northeasterly ditch in 1992 and his dynamiting the dam in 1991 were affirmative, intentional violations.

6. It is reasonable and appropriate for the Commissioner to issue an Order that requires Earl Buysse to restore the dam to its original condition with a crest elevation of 1145.84 feet above sea level (1929 datum); to fill the northeasterly channel excavated in 1992; and to require payment of investigative fees arising out of the investigation of this matter.

7. Minn. Stat. 103G.315, Subd. 4, requires that the Commissioner fix the control levels of public waters when a control level is contested. The DNR proved by a preponderance of the evidence that the run-out elevation for Kimpe Slough is appropriately set at 1145.84 feet above sea level (1929 datum).

8. Findings of Fact that are more appropriately considered as conclusions are hereby adopted and incorporated herein as Conclusions.

9. The Administrative Law Judge makes these Conclusions for the reasons given in the attached Memorandum. Where necessary, reasons contained in the Memorandum are adopted and incorporated herein as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner issue an Order to Earl Buysse requiring him:

1. To restore the dam in the outlet of Kimpe Slough to its originally constructed condition, establishing a crest elevation level at 1145.84 feet above sea level (1929 datum).

- 100        2.    To fill the upstream end of the drainage ditch for a distance of  
feet.
3.    To pay the field investigation fees of \$1,572.78 incurred by the  
Department in its investigation of this matter.
4.    To maintain the run-out elevation for Kimpe Slough at 1145.84 feet  
above sea level (1929 datum).

Dated: April 7, 1993.

ALLEN E. GILES  
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the Agency is required to  
serve  
its final decision upon each party and the Administrative Law Judge by first  
class mail.

Reported: Tape Recorded (8 cassette tapes)

MEMORANDUM

Violation of the Public Waters Permit Requirement

Minn. Stat. 103G.245, subd. I provides as follows:

Except as provided in subdivisions 2, 11, and 12, the  
state, a political subdivision of the state, a public or  
private corporation, or a person must have a public  
waters work permit to:

- (1) Construct, reconstruct, remove, abandon, transfer  
ownership of, or make any change in a reservoir, dam, or  
waterway obstruction on public waters; or
- (2) Change or diminish the course, current, or  
cross-section of public waters entirely or partially  
within the state, by any means, including filling,  
excavating, or placing of materials and/or on the beds of  
public waters.



The facts of this case clearly establish that Mr. Buysse on or about June 11, 1991, without a permit issued by the Commissioner dynamited the dam on the outlet of Kimpe Slough. The damage done to the dam caused the run-out level to be lowered to 1144.9 feet and 1145.3 feet. With respect to the dam, Mr. Buysse violated Minn. Stat., 103G.245 in two different ways: (1) first, the damage to the dam constitutes making "a change in a . . . dam . . . on public waters" without a permit. Second, the explosions blew out pieces of the dam creating new, lower crest elevations over the dam and to the left side of the dam. These new run-out levels constitute "a change" in the "course, current, or cross-section of public waters." The 1992 excavation of the northeasterly ditch also violated Minn. Stat. 103G.245 because the ditch changed or diminished the "course, current, or cross-section of public waters".

Mr. Buysse has asserted several defenses to these violations. First, he argues that the 1987 Restoration Order did not take into consideration an alleged agreement made by Mr. Jeffrey Lewis, DNR Area Hydrologist, on behalf of the DNR with Mr. Buysse and other landowners participating in the Kerr Tile Project. Mr. Buysse requests that the Administrative Law Judge give effect to such an agreement as a part of this proceeding. This amounts to a reconsideration or challenge to the determinations made in the 1987 Restoration Order. The Administrative Law Judge finds that these claims should have been asserted at the time of the 1987 Restoration Order. That Order allowed thirty days for appeal or to request a hearing. Ex. 13. The Order provided in part as follows:

"Pursuant to Minnesota Statutes, Section 105.44, subdivision 3 and 6, the applicant, the managers of the watershed district, the board of supervisors or the soil and water conservation district or the mayor of the city may demand a hearing on the Order provided the demand for hearing and the bond required by subdivision 6 be filed with the Commissioner within thirty days. No bond or security is required of a public authority which demands a hearing. The statutes further provide that if no demand for hearing be made or if a hearing is demanded but no bond is filed as required by subdivision 6, the Order shall become final at the expiration of thirty days after mail notice thereof and no appeal of the order may be taken to the Minnesota State Court of Appeals.

Notice of the 1987 Restoration Order was served upon at least two persons participating in the Kerr Tile Project, Mr. Kimpe and the Yellow Medicine River Watershed District. No appeal or request for a hearing was made. Therefore, the 1987 Restoration Order became an unappealable final decision of the DNR. Because the 1987 Restoration-Order is an unappealable final decision, a challenge to the decision at this time cannot be considered-

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1. After hearing testimony on this issue, the Administrative Law Judge notes

for the record that Mr. Buysse failed to prove that Mr. Lewis was authorized to enter into any agreement on behalf of the DNR. If the alleged agreement was implemented, the essential character of Kimpe Slough as a Type 4 wetland would change. For this reason the Administrative Law Judge credits the testimony of Mr. Lewis that no agreement was made.

Mr. Buysse next argues that his dynamiting of the dam should be considered appropriate because of emergency situation that existed that required that he take corrective action. The emergency situation arises as a result of the DNR installing the dam over the Kimpe Slough outlet at an elevation 1146.04 feet instead of 1145.6 feet or .44 feet (an open 5.3 inches) higher than required by the 1987 Restoration Order. After heavy rainfall in the last week of May and first two weeks of June 1991, with acres of crops being flooded, Mr. Buysse asserts that he took action to correct the DNR error by dynamiting the dam. He further asserts his actions were reasonable because the value of the dam, in terms of building costs, was approximately \$350 as compared to the value of the crops threatened by the flooding water was approximately five to eight thousand dollars. Mr. Buysse relies upon Minn. Stat. 103G.245, subd. 11 (1992) as a basis for his claim. This provision provides in part as follows:

(a) The owner of a dam, reservoir, control structure, or waterway obstruction, may make repairs that are immediately necessary in case of emergency without a public waters work permit under subdivision 1. The owner must immediately notify the commissioner of the emergency and of the emergency repairs being made. The owner must apply for a public Waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable.

(b) This subdivision does not apply to routine maintenance not affecting the safety of the structures.

(c) If the commissioner declares there is an emergency and repairs or remedial action are immediately necessary to safeguard life and property, the repairs, remedial action, or both, must be started immediately by the owner.

Mr. Buysse argues that the above exception should apply to his dynamiting the dam. He asserts that he corrected a DNR mistake and protected his crops from water damage. First, the Administrative Law Judge has some difficulty viewing Mr. Buysse's use of dynamite as an "emergency repair." Mr. Buysse's testimony was that his purpose was to increase the flow of water out of Kimpe Slough and not specifically to lower the dam to a particular level. The explosion increased the size of the dam's middle opening and lowered the run-out elevation of the dam. Ex. 2. The new run-out elevations were illegal because they were lower than the run-out elevation authorized by the 1987 Restoration Order. The Administrative Law Judge does not view Mr. Buysse's action as a "repair."



To qualify for the exception contained in subdivision 11 (1) an emergency must exist; (2) the owner must immediately notify the Commissioner of the emergency and emergency repairs being made; and (3) the owner must apply for a permit as soon as practicable. Mr. Buysse has failed to prove that his circumstances qualifies for the exception.

First, no emergency has been shown. All that has been alleged was a heavy rainfall in the end of May and the first weeks of June 1991. As the July, 1991 aerial photograph of the area demonstrates Exhibit 15C, the upstream owners except for Mr. Buysse had standing waters in their fields.

Excess rain is not an emergency, but rather a normal hazard of farming. Subdivision 11 requires two notifications. "The owner must immediately notify the commissioner of the emergency and the emergency repairs being made." Mr. Buysse never notified the Commissioner of the emergency, nor did he notify the Commissioner of his "repairs". Subdivision 11 also requires that "the owner must apply for a public waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable." Mr. Buysse informally applied for a public waters work permit by his attorney's letter in November of 1991, approximately five months after he dynamited the dam. The five-month delay cannot be deemed to be "as soon as practicable." Mr. Buysse's failure to notify the Commissioner and his delay in making a request for a permit disqualify him from using the exception contained in Minn. Stat. 103G.245, subd. 11 (1992).

Mr. Buysse has asserted no reasonable argument justifying the excavation that occurred in 1992. There is the suggestion that Mr. Buysse cleared out an already existing ditch, however any excavation below the run-out elevation violates Minn. Stat. 103G.245, subd. 1. Application of Christenson, 417 N.W.2d 607 (Minn. 1987).

Finally, the Administrative Law Judge has concluded that Mr. Buysse's violations were intentional. Mr. Buysse was forewarned against future violations of the Public Waters Law. He nevertheless drained Kimpe Slough by dynamiting the dam in 1991 and excavating the ditch in 1992. Mr. Buysse acted in defiance of the law and without regard for the protection of public waters.

#### Whether Mr. Buysse should be Required to Make Payment of Fees and -Cost

Mr. Buysse asserts that it would be inappropriate to charge him fees and costs because the DNR's error caused him to take the action that damaged the dam. In addition, Mr. Buysse claims throughout his brief that he had a right to dynamite the dam to protect his property. The Administrative Law Judge summarily rejects Mr. Buysse's claim that he was compelled to dynamite the dam by DNR's error. Mr. Buysse had other options. We live in a society governed by rule of law. Where a person believes that he has been wronged the law provides a remedy. If, or assuming, Mr. Buysse's crops were damaged, a remedy is provided for him to receive just compensation. However, Mr. Buysse chose the route of self-help. The vigilantism demonstrated by Mr. Buysse should not be rewarded; he should pay for his choice of action. Therefore it is appropriate for Mr. Buysse to pay the fees and costs of the investigation involved in this case.

#### Appropriate Run-Out Levels of Kimpe Slough

Minn. Stat. 103G.315, subd. 4 requires that where a protected public

water's control level is at issue, "the commissioner shall also fix the control levels." The proper "control level" or run-out elevation is a main issue in this proceeding; therefore, the Commissioner is required to set the control level of Kimpe Slough.

The only survey of elevations at Kimpe Slough before the installation of the Kerr Tile was conducted by Jeffrey Lewis in 1986. The 1986 survey is also the basis for establishing the run-out level for Kimpe Slough in the 1987

The 1986 survey found that the normal run-out level for

run-out level for Kimpe Slough was 1145.6 feet above sea level (1929 datum). Because of the error in the temporary benchmark used for the survey .24 feet must be added to this elevation. Therefore the correct run-out elevation of Kimpe Slough is 1145.84 feet above sea level (1929 datum).

A final issue addressed in this proceeding is the location of the Kimpe Slough normal and historical outlet. The aerial photographs clearly establish that the north outlet is the normal and historical outlet for Kimpe Slough.

A.E.G.